

[Release No. 34-35340; File No. SR-NASD-94-77]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Granting the Director of Arbitration the Authority to Delegate Duties Under the Code of Arbitration Procedure

February 8, 1995.

On December 20, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² The proposed rule change amends Section 3 of the Code of Arbitration Procedure ("Code")³ to expressly provide that the Director of Arbitration ("Director") may delegate decisionmaking authority as appropriate.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35168, December 29, 1994) and by publication in the **Federal Register** (60 FR 1822, January 5, 1995). No comment letters were received. This order approves the proposed rule change.

The current provisions of Section 3 of the Code provide for the NASD Board of Governors to appoint a Director to perform all administrative duties and functions in connection with matters submitted for arbitration pursuant to the Code. The Director has found it necessary to delegate certain duties and functions of the Director to other senior management employees of the NASD's Arbitration Department ("Department"), especially as a result of the significant growth in the Department's staff and workload. The NASD believes that the authority of the Director to manage the functions of the NASD's Arbitration Department inherently includes the power to delegate duties and functions as appropriate. Nevertheless, the rule change amends Section 3 of the Code to expressly permit the Director to delegate duties and functions of the Director as appropriate.

The rule change provides that the Director may delegate duties and functions of the Director as appropriate. Further, in the event that the Director is incapacitated, resigns, is removed or is

permanently or indefinitely disabled from the performance of the duties and functions of the Director, the rule change permits the NASD President or an NASD Executive Vice President to appoint an interim Director to perform the functions and responsibilities of the Director.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁴ because the rule change will protect investors and the public interest by avoiding uncertainty and possible litigation about the authority of a Department staff member to act under the Code by permitting the Director to delegate duties and functions vested by the Code with the Director. The Commission further believes that by permitting certain other NASD officers to appoint an interim Director if circumstances render the Director unable to discharge the duties vested with the Director, the proposal will help protect investors and is in the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that file No. SR-NASD-94-77 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35339; File No. SR-NASD 94-71]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Application of "Do Not Reduce" and "Do Not Increase" Instructions With Respect to the Repricing of Open Orders

February 7, 1995.

On December 7, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The rule change amends Article III, Section 46 of the Rules of Fair Practice,³ which governs

adjustment of open orders, relating to the applicability of this section to orders marked "do not reduce" ("DNR") and "do not increase" ("DNI"). The provisions of Section 46 deal with the adjustment of open orders in the event of a payment or distribution. As amended, the rule will neither apply to orders marked DNR where the dividend is payable in cash, nor to orders marked DNI where the dividend is payable in stock, provided that the price of such DNI orders shall be adjusted as required by the rule.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release⁴ and by publication in the **Federal Register**.⁵ No comments were received in response to the notice. This order approves the proposed rule change.

Article III, Section 46 of the Rules of Fair Practice, which became effective September 15, 1994, requires a member to adjust the price and size of an open order in proportion to the dividend or other distribution on the day the security is quoted "ex",⁶ before the member may permit the order to be executed. The amendment has been proposed in response to an inconsistency in the definition of the terms DNR and DNI between the NASD's Section 46 and New York Stock Exchange ("NYSE") Rule 118,⁷ on which Section 46 was patterned. Because Section 46 was intended to operate in the same manner as NYSE Rule 118, the NASD filed the proposed rule change to amend the definitions of DNR and DNI to conform to the definitions in Rule 118.

Under NYSE Rule 118, a DNR instruction applies only with respect to cash dividends. An order with a DNR instruction will not be reduced in price in the event of a cash dividend. Such an order will, however, be reduced in price and increased in size in the event of a stock dividend or split. In addition, under NYSE Rule 118, a DNI instruction applies only with respect to order size adjustments in the event of stock dividends. While an order with a DNI instruction will not be increased in size, it will be reduced in price in the event of a stock dividend or split. An order with a DNI instruction is inapplicable in the event of a cash distribution because the

⁴ Securities Exchange Act Release No. 35169 (December 28, 1994).

⁵ 60 FR 2169 (January 6, 1995).

⁶ The "ex-date" represents the day on which the underlying security is traded without a specific dividend or distribution. NASD Manual, Uniform Practice Code, Section 3(e), (CCH) ¶ 3503.

⁷ NYSE Guide, Handling of Orders and Reports, Rule 118, (CCH) ¶ 2118.

¹ 15 U.S.C. Section 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASD Manual, Code of Arbitration Procedure, Part I, Sec. 3 (CCH) ¶ 3703.

⁴ 15 U.S.C. Section 70a-3.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

⁷ NASD Manual, of Fair Practice, Article III, Section 46, (CCH) ¶ 2200F.